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EXAMINER

UTAMA, ROBERT J

ART UNIT	PAPER NUMBER
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3715

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/594,108	Applicant(s) MLYNARSKI, ZBIGNIEW	
	Examiner ROBERT J. UTAMA	Art Unit 3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09/25/2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09/25/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because the figures 1-4 are dark and the marking on the figures are illegible. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-9 and 15-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A process claimed is considered to be directed to a statutory subject matter if it can be shown that the claimed process:

- be tied to a particular machine or apparatus (machine implemented); or
- particularly transform a particular article to a different state or thing.

Additionally, the particular machine tie or particular transformation must meet two corollaries to pass the test for subject matter eligibility. First, the use of the particular machine or transformation of the particular article must impose a **meaningful limit** on the claim's scope. So, a machine tie in only a field-of-use limitation would not be sufficient. Second, the use of the particular machine or the transformation of the particular article must involve **more than insignificant "extra-solution" activity**. In this particular case, the method claims 1-9 fail to provide any tie to another apparatus or machine.

Claim 15-16 are directed toward a computer program that are not embodied in computer readable medium. As such, the limitation of claim 15-16 can be interpreted as nonstatutory functional descriptive material (see MPEP 2106.01 part I).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-9 are directed toward a method or process type claim. However, the claim 1 does not include any step that defines the process or method for supporting dietary habits. As such, it is unclear what the metes and bound of the method of claim 1 would be.

7. Claim 7 set forth the limitation of " ... presented in an ordered way on the degree in which they enable to complete the remaining requirement of the food components." The

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examiner interprets said limitation as a relative term which renders the claim indefinite. The term "... presented in an ordered way on the degree in which they enable to complete the remaining requirement of the food components" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree to determine such limitation, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

8. Claim 16 is also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 is directed toward a product claim while claim 1-9 are directed toward a set of method claims. As such, it is unclear what the scope of claim 16 would be. It is unclear if the limitation of claim 16 should be directed toward a method claim or if claim 16 is directed toward a product claim.

9. Claims 10-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 and 15 recite the limitation "the list of the recommended nutrition product" in the last line of claim 10 and 15. There is insufficient antecedent basis for this limitation in the claim. Since claims 11-14 and 16 are dependant upon a rejected the claim, claim 11-14 and 16 are also rejected under 35 U.S.C 112 second paragraph.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. **Claims 1-3, 6-8, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams US 5, 704,350 and Albaster US 6,553,386**

Claims 1 and 16: The Williams reference provides a teaching of a method of supporting dietary habits comprising of:

- a) a specification of nutrition products together with the given content of the chosen food components for each of the nutrition products is created (see col. 13:20-25);
- b) a recommended consumption of the chosen food components is established by the user in the established period of time (col. 12:20-35);
- c) a specific list of nutrition products is created (see FIG 10-11);
- d) the information concerning the nutrition products consumed by the user is introduced (see col. 12:65-13:5);
- e) the content of the chosen food components in the consumed nutrition products is established on the basis of the data from previously prepared specifications (point a) to d)) [see col. 12:50-60] ;
- f) the quantity of food components in the consumed nutrition products supplied to the human organism is compared to the recommended consumption of each of the food components in the given period of time and the remaining requirements for the chosen food components are fixed for the exact time in accordance to the quantity of the appropriate food components deducted from the established requirement of the chosen food components (see col. 13:27-40);

The William reference fails to provide a teaching where the list of the recommended list of the recommended nutrition products is presented taking into consideration the specific list of nutrition products and the remaining requirements of the chosen food components. However, the Albaster reference provides a teaching of list of the recommended list of the recommended nutrition products is presented taking into consideration the specific list of nutrition products and the remaining requirements of the chosen food components (see col. 6:20-40). Therefore,

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it would have been obvious to one of ordinary skilled in the art to include the feature of list of the recommended list of the recommended nutrition products is presented taking into consideration the specific list of nutrition products and the remaining requirements of the chosen food components, as taught by Albaster, in order to inform the user in the proper consumption amount of the different food group (see cool. 4:25-40).

Claims 2 and 3: The Williams reference provides a teaching of a method of supporting dietary having a specific list of nutrition products is created by introducing the information concerning the kind and quantity of the nutrition product and where the information concerning the kind and quantity of the nutrition product is introduced by the user (see col. 12:65-13:5 the user selecting the food group and amount).

Claim 6: The Williams reference provide a teaching where the information concerning the nutrition products consumed by the user is introduced by the user (see col. 14:45-55).

Claim 7: The Williams reference fail to provide a teaching of the list of the recommended nutrition products is presented in an ordered way depending on the degree in which they enable to complete the remaining requirements of the food components. However, the Alabaster reference provides a teaching of the list of the recommended nutrition products is presented in an ordered way depending on the degree in which they enable to complete the remaining requirements of the food components (see col. 6:35-45). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of the list of the recommended nutrition products is presented in an ordered way depending on the degree in which they enable to complete the remaining requirements of the food components, as taught by Albaster, in order to inform the user in the proper consumption amount of the different food group (see cool. 4:25-40).

Claim 8: The Williams reference is silent in the feature of the list of the recommended nutrition products is presented taking into consideration the history of consumption during a fixed period of time. However, the Alabaster reference provides teaching of list of the recommended

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nutrition products is presented taking into consideration the history of consumption during a fixed period of time (see col. 3:65-4:15 and col. 6:45-60). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of the list of the recommended nutrition products is presented taking into consideration the history of consumption during a fixed period of time, as taught by Albaster, in order to inform the user in the proper consumption amount of the different food group (see col. 4:25-40).

12. **Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams US 5, 704,350 and Albaster US 6,553,386 and further in view of Mault US 2002/0047867.**

Claims 4-5: The Williams reference fails to provide a teaching where the specific list of nutrition product is created by introducing a set of dishes offered in restaurant or canteen where the the specific list of nutrition product is created by introducing a set of dishes offered in restaurant or canteen is introduced by a means of computer network. However, the Mault reference provides a teaching of provide a teaching where the specific list of nutrition product is created by introducing a set of dishes offered in restaurant or canteen where the the specific list of nutrition product is created by introducing a set of dishes offered in restaurant or canteen is introduced by a means of computer network (see paragraphs 51, 79). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of provide a teaching where the specific list of nutrition product is created by introducing a set of dishes offered in restaurant or canteen where the the specific list of nutrition product is created by introducing a set of dishes offered in restaurant or canteen is introduced by a means of computer network, as taught by Mault, in order to allow the user the flexibility of eating out and still maintain their dietary goal.

13. **Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams US 5, 704,350 and Albaster US 6,553,386 and further in view of Yeager US 2003/0091964**

Claim 9: The Williams reference fails to provide a teaching of a list of the recommended nutrition products is presented taking into consideration information concerning the glycemic index of the particular nutrition products. However, the Yeager reference provides a teaching of a list of the recommended nutrition products is presented taking into consideration information concerning the glycemic index of the particular nutrition products (see paragraph 51). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of a list of the recommended nutrition products is presented taking into consideration information concerning the glycemic index (OY) of the particular nutrition products, as taught by Yeager, in order to account of different dietary requirement (see paragraph 5).

14. **Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams US 5, 704,350, in view of Yeager US 2003/0091964**

Claim 12: The William reference fails to provide a teaching where the loading element has the form of a keyboard. Instead, loading elements of Williams take the shape of button and dial. The Yeager prior art showed a different mean of loading element in the form of a keyboard (paragraph 31). Therefore, it would have been obvious to one of ordinary skill in the art to substitute the loading element taught by Williams for Yeager's keyboard for the predictable result of having a keyboard a mean of inputting user information.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. **Claim 10-11, 13-14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams US 5,704,350**

Claims 10 and 15: The Williams reference provides a teaching of :

- a storage element for storing the information concerning the content of the specific food components in the nutrition products (see col. 11:18-23), information about the consumption of the chosen food components in a fixed period of time recommended for the user (see col. 15:15-20), information about the specific nutrition products (see col. 7:50-67), information about the consumed nutrition products and information concerning the user and the consumption of the chosen food components in a given period of time recommended for the user (see col. 13:27-40);
- a loading element for introducing the data concerning the kind and quantity of the consumed nutrition products and the data concerning the user and the consumption of the chosen food components in a given period of time recommended for the user (see col. 12:45-55);
- an analytical element for calculating and establishing the remaining requirement for the chosen food component on a fixed period of time after taking into consideration the consumed nutrition product (see col. 15:45-60);
- a presentation elements for displaying the list of the recommended nutritional products (see FIG. 1 item 12).

Claim 11: The William reference provide a teaching where the storage element is organized in the form of an electronic database (see col. 2:5-15).

Claim 13: The William reference provides a teaching where the presentation element has the form of a display (see FIG. 1 item 12).

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Claim 14: The Williams reference provides a teaching where the system has the form of a portable device containing a display and buttons (see col. 12:45-55 and FIG. 1 item 12).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. UTAMA whose telephone number is (571)272-1676. The examiner can normally be reached on 9-5:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. U./
Examiner, Art Unit 3715